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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL RODRIGUEZ,

Defendant and Appellant.

B201696

(Los Angeles County
Super. Ct. No. BA300423)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Charlaine F. Olmedo, Judge. Affirmed.

William J. Capriola, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, James William Bilderback II and David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

Following the denial of his motion to quash a search warrant and suppress evidence (Pen. Code, § 1538.5), appellant Manuel Rodriguez pled guilty to the charged offenses of possession of methamphetamine for sale (Health & Saf. Code, § 11378),¹ transportation of methamphetamine (§ 11379, subd. (a)), and possession of methamphetamine with a firearm (§ 11370.1, subd. (a)). Appellant was granted probation on the condition, among others, that he serve one year in the Los Angeles County jail. On this appeal, he contends probable cause did not exist to support the issuance of the search warrant that yielded the proof of his guilt. We disagree and affirm the judgment.

FACTUAL SUMMARY

As revealed at the preliminary hearing, on March 27, 2006, Los Angeles Police Detective Philip Scallon searched the Mariposa Avenue apartment of appellant's father, Jose Rodriguez. He found an assault rifle in a closet and also discovered cash, plastic baggies, an electronic scale, and three guns.

As Detective Scallon was leaving the apartment, he saw appellant and detained him. Another police officer searched appellant and found the keys to appellant's truck, three baggies of methamphetamine, and \$240 in cash. Inside appellant's wallet was a piece of paper listing weights of narcotics to be sold and prices. Detective Scallon searched appellant's truck and found a hidden compartment in place of the passenger side airbag, which opened from a remote control found on appellant's keys. In the hidden compartment, Detective Scallon found three bags of methamphetamine, a loaded gun, and a scale. The detective opined that appellant was transporting and possessing methamphetamine for sale.

The search warrant.

The search and seizure were pursuant to a search warrant and affidavit drafted on March 25, 2006, by Detective Scallon. The search warrant, signed by Judge Michael

¹ Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Tynan, granted the police permission to search the Mariposa Avenue apartment, as well as locations on Crenshaw Boulevard and Gordon Street. The search warrant also covered several vehicles, including appellant's truck.

The search warrant affidavit stated that on February 11, 2006, Detective Scallon received a tip that some Korean men were storing and delivering narcotics to the Crenshaw apartment complex, and had "up to . . . two pounds of methamphetamines." One of the men was identified as Jong So, who was on probation for possession of methamphetamine. Detective Scallon surveilled the complex and saw several motion sensors and cameras surrounding the building. The building also had a wrought iron security door with a digital entry pad and no handle. The inner door had another dead bolt, and the windows were covered with blinds, sheets, and black plastic.

As further related in the search warrant affidavit, Detective Scallon saw a number of Korean men, including So and John Kim Gold, come and go from the building during the course of the next month. So and Gold regularly came and went at night, with Gold carrying a black bag and entering a code to open the door. Gold drove an SUV that was identified in the original tip as the car used for narcotics delivery. On the basis of his observations of Gold coming and going with the black bag and using the SUV, Detective Scallon opined that the SUV was being used to deliver narcotics. Gold had previous arrests for forgery and burglary, and drove with a suspended license. Detective Scallon observed that only a limited number of people had the lock code, and all other people had to call to have someone let them in.

On February 28, 2006, So and another man brought more blinds for the building and put them up to block more windows. On March 9, 2006, early in the evening Gold and another man escorted two women to their car. One of the women gave Gold a baggie of marijuana, and Gold examined it closely. The women drove away, and Gold and the other man returned to the complex. Ten minutes later, appellant arrived in his truck, a white GMC SUV, with three small children. Almost an hour later, Gold and the other man he was with ran to their SUV and sped away, driving through a red light. Gold

constantly looked around and, according to Detective Scallon, drove “in a manner consistent with counter surveillance.”

From appellant’s license plate, Detective Scallon discovered that appellant lived in an apartment on Mariposa. Appellant had convictions for receiving stolen property, grand theft cargo, assault, and assault with a deadly weapon.

On March 25, 2006, Detective Fukuda received a call about a kidnapping. The kidnapping victim was So. So told Detective Fukuda that he lived at the Crenshaw apartment complex with Russel Eo, the son of the owner of the Crenshaw complex. So and Eo fought “over a drug deal,” and Eo pointed a gun at So and ordered him to pick up narcotics so that they could deliver them to a different address. So picked up the narcotics, but ran when they got to the delivery location. So then called the police, and Officer Fukuda requested additional police units. Eo was on parole and had convictions for kidnapping, carrying a concealed weapon, and robbery.

As also set forth in Detective Scallon’s affidavit, So told the detective that Eo and Gold “washed” methamphetamine at the Crenshaw complex, turning it into “crystal meth.” So told Detective Scallon that he would find methamphetamine and chemicals for washing it inside the Crenshaw complex. Detective Scallon asked So if he knew appellant, and So responded that he did know him, that he had been to appellant’s apartment once on Mariposa, and that “[h]e buys meth from here then he sells it.” So added that appellant bought half an ounce at a time, and he identified appellant from a photograph. Detective Scallon opined that based on those facts, narcotics and weapons would be found at the Mariposa apartment.

The motion to quash the search warrant.

Following the search and seizure pursuant to the search warrant, appellant moved to quash the search warrant. In his motion and at the hearing on the motion, appellant argued that the search warrant affidavit did not contain probable cause that appellant was involved in narcotics activity, or that contraband was located in his apartment or his truck. Appellant argued that So was unreliable as an informant, and that the information in the affidavit was stale because the search warrant was issued 12 days later.

The prosecutor argued the Detective Scallon saw appellant enter a narcotics location, and when So told him that he knew appellant and where appellant lived, it corroborated the information that the police already had. So told Detective Scallon that appellant bought and sold methamphetamine. Because narcotics dealers commonly transport narcotics in their cars and store them at home, there was probable cause to believe that the police would find narcotics at appellant's home and in his truck. The prosecutor also argued that the officers had acted in good faith when they acted on the warrant and cited to *United States v. Leon* (1984) 468 U.S. 897.

The trial court denied appellant's motion to quash. It ruled that Detective Scallon had established probable cause to search appellant's home and truck. The court also found that the good faith exception applied in any event, and that the information in the search warrant affidavit was not stale because there was "a likelihood that the items being searched [could] be found at locations that [were] listed in the search warrant." The court found that the search warrant affidavit described "an ongoing methamphetamine manufacturing and selling operation by Koreans for the most part and that . . . [appellant] was a mid-level buyer/seller [¶] But it was an ongoing drug operation which was ongoing up to the point that the police came into contact with [So] and got [the] search warrant[].".

DISCUSSION

A search warrant may be issued if a magistrate finds probable cause. (See *People v. Campa* (1984) 36 Cal.3d 870, 878.) Probable cause exists if "there is a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 238.)

Appellate review of a trial court determination of probable cause on a motion to suppress evidence under Penal Code section 1538.5 is a two-step process. Express or implied findings of fact are upheld if supported by substantial evidence; we then use independent judgment to determine whether those facts establish probable cause. (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597.) Courts should not invalidate search or arrest

warrants by imposing hypertechnical requirements rather than a common sense approach to probable cause. (*United States v. Ventresca* (1965) 380 U.S. 102, 108.)

Probable cause to issue an arrest or search warrant must, however, be based on information contained in an affidavit providing a substantial basis from which the magistrate can reasonably conclude there is a fair probability that a person has committed a crime or a place contains contraband or evidence of a crime. (*Illinois v. Gates, supra*, 462 U.S. 213.) Probable cause to search a defendant's residence is established, for example, once the affiant has shown that the defendant is a narcotics dealer. (See *People v. Cleland* (1990) 225 Cal.App.3d 388, 392-393; *People v. Koch* (1989) 209 Cal.App.3d 770, 778-781.)

In determining probable cause, an informant's reliability must be reviewed under a totality of the circumstances test. (*Illinois v. Gates, supra*, 462 U.S. at pp. 230-231.) The evidence presented in the search warrant affidavit "must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." (*Id.* at p. 232.) For example, "even if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case." (*Id.* at p. 234.) "Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants." (*People v. Weiss* (1999) 20 Cal.4th 1073, 1082-1083.)

In the present case, So voluntarily came to the police to report a kidnapping by Eo, and in the course of a subsequent interview with Detective Scallon, stated that he knew appellant, had been to appellant's apartment, and knew that appellant bought and sold methamphetamine. The fact that So voluntarily came forward as the victim of a crime enhanced the reliability of his information. Even if So was not a presumptively reliable citizen informant as to appellant's activities (compare *People v. Lombera* (1989) 210 Cal.App.3d 29, 32), there is no indication in the record that So felt he had to curry favor

with the police. So's statement corroborated Detective Scallon's independent suspicion that appellant was involved in narcotics trafficking from the March 9 visit by appellant to what was known to be a narcotics house. So's statement, given as the victim of a crime, coupled with the detective's own observations of appellant, constituted probable cause to believe that appellant was dealing methamphetamine.

It is well settled that once Detective Scallon had probable cause to believe that appellant was a narcotics dealer and opined that he would find narcotics at appellant's residence, there was probable cause for a search warrant of appellant's residence. (See *People v. Aho* (1985) 166 Cal.App.3d 984, 991-993.) Because, as the prosecutor aptly argued during the hearing on the motion to suppress, drug dealers commonly transport narcotics in their vehicles and store them at their residences, Detective Scallon properly included appellant's vehicle among the locations to be searched. Particularly when viewed under the deferential standard of review applicable to this search warrant (see *People v. Garcia* (2003) 111 Cal.App.4th 715, 720), the trial court properly denied the motion to quash the search warrant.

Moreover, appellant's assertion that the information upon which the search warrant was based was stale at the time the warrant was issued is without merit. "[T]he question of staleness depends on the facts of each case." (*People v. Gibson* (2001) 90 Cal.App.4th 371, 380.) "If the circumstances would justify a person of ordinary prudence to conclude that an activity had continued to the present time, then the passage of time will not render the information stale. . . . Although there is no bright line rule indicating when information becomes stale [citation], delays of more than four weeks are generally considered insufficient to demonstrate present probable cause." (*People v. Hulland* (2003) 110 Cal.App.4th 1646, 1652.) Here, although the search warrant was requested 16 days after Detective Scallon saw appellant at the Crenshaw complex, it was requested as soon as he confirmed from So on March 25 that appellant bought and sold methamphetamine. Also, to the extent the search warrant affidavit depicted an ongoing narcotics operation, just because Detective Scallon had not seen appellant come back to

the Crenshaw complex for two weeks, there was no reason to suspect appellant had gotten out of the business of methamphetamine sales.

Accordingly, apart from whether Detective Scallon acted in good faith and reasonably believed there was probable cause when he relied on the search warrant, which would obviate application of the exclusionary rule (*United States v. Leon, supra*, 468 U.S. at p. 922; see *People v. Pressey* (2002) 102 Cal.App.4th 1178, 1191), there was adequate probable cause to support issuance of the search warrant. Thus, the trial court properly denied the motion to quash the warrant and to suppress the evidence seized.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.